

FILE *COPY*

Paul A. Allen
Executive Vice President
General Counsel and Secretary

PROPRIETARY & CONFIDENTIAL**P-0729**

February 23, 1996

VIA FACSIMILE AND MAIL

M. Luc Gyselen
Head of Unit IV/D
Directorate General IV - Competition
Commission of the European Communities
Av. de Cortenberg 150 - B
1040 Brussels, Belgium

**GOVERNMENT
DEPOSITION
EXHIBIT
298**Re: Case IV/35.897 - American Express v. Visa U.S.A.

Dear Mr. Gyselen:

Thank you for your letter of 20 February 1996. In view of our response therein to your 12 February letter, we are puzzled that you seek further responses to questions 1-6. Indeed, we are particularly surprised at the suggestion that answers to questions 1-3 are still necessary as all of those questions pertain to the terms of the Visa U.S.A. By-Laws, which we have previously stated do not extend to the activities of entities outside the United States. Since answers to questions 1-3 will not inform the Commission as to the matter at issue, we do not understand the purpose of further inquiry as to those questions in particular.

Nonetheless, in the interest of drawing this matter to a close, we will respond herein. We do so on a purely voluntary basis, without conceding the authority or jurisdiction of the Commission with respect to its inquiry of Visa U.S.A. on these matters. Further, we respectfully claim confidential treatment of both this letter and our earlier letter of 12 February.

Question 1

- (1) We attach hereto a copy of Visa U.S.A. By-Law Section 2.10(e).

VISA U.S.A. Inc. Post Office Box 8999, San Francisco, California 94128-8999 (415) 432-3410 Fax (415) 432-2145

Paul Allen

VU 0396267

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(2) We attach hereto a copy of Visa U.S.A. By-Law Section 2.06, the primary subject of the litigation in SCFC v. Visa U.S.A. These are two different rules.

(3) Sections 2.06 and 2.10(e) are the only two By-Law provisions of Visa U.S.A. that pertain to issuance by a Visa member of American Express cards. The same provisions are duplicated in a set of operating regulations provided to member banks.

Question 2

The Board of Directors of Visa U.S.A. has not designated any other cards as "competitive" pursuant to either of the aforementioned By-Laws.

Question 3

You have asked about the meaning of "indirectly" issuing within the context of By-Law Sec. 2.06 and 2.10(e). The short answer is that one cannot define that one word outside of the broader context of these and related By-Law provisions, as well as their purpose and intent. In this connection, we draw your attention to the definition of "issue" as set forth in By-Law Sec. 2.03(a)(11), attached. Further, the sum and substance of By-Law Sections 2.06 and 2.10(e), and the associated definitions, is to prohibit Discover and American Express from becoming Visa card issuers, whether through actual membership in Visa or through an affiliation with a Visa member. Of course, this purpose would be eviscerated if Discover and American Express were permitted to accomplish indirectly what they may not accomplish directly.

Question 4

Visa U.S.A. does not have a policy or position with respect to the possible adoption by Visa International of a rule equivalent to the rules pertaining to American Express in the United States.

Question 5

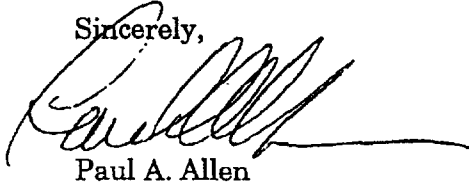
Please see the response to the foregoing question.

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Question 6

To the best of my knowledge, Visa U.S.A. has not prepared any document or report for Visa International with respect to the possible adoption by Visa International of a rule equivalent to the rules pertaining to American Express in the United States.

Sincerely,



Paul A. Allen

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[F:\... \PAALAH\AMEXDCG]

ENCLOSURE

cc: Carol Walsh
Visa International

Paul Allen

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**Section 2.10. Involuntary Termination of Membership and
Cessation of Cheque Issuance.**

- (e) The membership of any member shall automatically terminate in the event it, or its parent, subsidiary or affiliate, issues, directly or indirectly, Discover Cards or American Express Cards, or any other card deemed competitive by the Board of Directors; in the event the member has issued such competitive card prior to the Board declaring such card competitive, the membership of such Member shall not terminate if it discontinues issuing such competitive card within 60 days of notification by Visa. Outstanding competitive cards need not be cancelled prior to expiration.

Visa U.S.A. By-Laws

Section 2.06. Acceptance of New Members. The corporation shall accept for membership any applicant which is prepared to and deemed by the corporation to be able to perform the obligations and functions of membership which it shall elect to perform pursuant to Section 2.04. The corporation may consider whether projections of an applicant's Card and/or Cheque Programs indicate a reasonable expectation of a profitable level of operations and, therefore, continued participation as a member. The Board of Directors or the Executive/Planning Committee of the Board, by a majority vote of their respective total membership, or an Executive Vice President or above or any two Senior Vice Presidents of the corporation, may impose conditions of membership to insure that such applicant meets its obligations under the corporation's Certificate of Incorporation, these By-Laws, and the International Operating Regulations. Such conditions may include, to the extent deemed prudent by the Board or such officer(s), but are not limited to, requiring the applicant to pledge collateral to the corporation in such form and amount as determined by the Board or such officer(s) or restricting the scope and types of activities of the applicant's operations. Membership shall begin on the date an applicant is accepted for membership and, if such applicant ceases to be an organization described in Section 2.01, shall terminate sixty days after the date of a written notice to such effect given by the Board of Directors or the President. Notwithstanding (a) above, if permitted by applicable law, the corporation shall not accept for membership any applicant which is issuing, directly or indirectly, Discover cards or American Express cards, or any other cards deemed competitive by the Board of Directors; an applicant shall be deemed to be issuing such cards if its parent, subsidiary or affiliate issues such cards.

Visa U.S.A. By-Laws

Section 2.03. General Obligations of Membership. Every member shall participate in the Corporation's Payment Services in one or more categories of membership. Section 2.04 of the By-Laws specifies the functions authorized and the attendant obligations for each category of membership. A member shall have the rights and obligations of all categories in which it participates with the consent of the corporation.

(a) As used in the By-Laws:

- (11) To "issue" Cards means to enter into direct contractual relationships as the principal party with holders of Cards, to maintain and service such relationships, and either (i) extend credit to and collect credit from such cardholders, (ii) purchase accounts receivable due from and collect balances of such accounts from cardholders, (iii) debit deposit accounts of such cardholders in connection with transactions arising out of the use of such Cards, or (iv) guarantee the payment of checks or similar instruments through the use of such Cards;

Visa U.S.A. By-Laws